ATTORNEYS FOR APPELLANT

Rachel M. Rogers
Noah T. Williams
Monroe County Public Defender's Office
Bloomington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Evan Matthew Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kelsie L. West,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 30, 2021

Court of Appeals Case No. 21A-CR-404

Appeal from the Monroe Circuit Court

The Honorable Darcie L. Fawcett, Judge

Trial Court Cause No. 53C09-1909-CM-2233

Kirsch, Judge.

[1] Kelsie L. West ("West") was charged with computer trespass[1] and conversion,[2] both Class A misdemeanors. In this discretionary interlocutory appeal, West raises the following restated issue: whether the trial court abused its discretion when it denied her motion to dismiss the computer trespass charge.

[2] We affirm.

Facts and Procedural History

[3] For approximately two years, B.G. had been in an "on-again/off-again relationship" with her ex-boyfriend, Gage East ("East"). *Appellant's App. Vol. II* at 23. In July 2019, B.G. had "recently" begun communicating with East via Snapchat because she believed that East was no longer in a relationship with his other ex-girlfriend, West. *Id.* Near the end of July 2019, B.G. sent several intimate and nude photographs of herself to East via Snapchat. *Id.* On July 27, 2019, B.G. learned that the intimate and nude photographs had been posted to West's Facebook page with a caption that read, "This is what Gage has been up to since November while also sleeping with me and talking to other girls." *Id.*

[4] B.G. took screenshots of West's Facebook page and called the police to report the incident. *Id.* By the time the police arrived to speak with B.G., the photographs had been removed from social media. *Id.* B.G. told the police that

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[1] *See* Ind. Code § 35-43-2-3(b)(1).

[2] *See* Ind. Code § 35-43-4-3(a).

she believed West had obtained the photographs from East's phone, and West then posted them to her Facebook page and made them publicly viewable on East's Snapchat Story. *Id.*

[5] After concluding the interview with B.G., the police contacted West. *Id.* West told the police that she had a child by East and that she was angry with East because he was engaged in sexual relationships with B.G. and other women. *Id.* West confirmed that she obtained the photographs from East's phone and then posted them to social media, "to let everyone know what [East] had been up to." *Id.* She told the police that East had saved the compromising photographs to a private conversation in Snapchat and that she found the photographs and made them public. *Id.* Based upon the information that West provided, the police requested that an arrest warrant be issued for her. *Id.*

[6] On September 12, 2019, the State charged West with one count of distribution of an intimate image, a Class A misdemeanor. *Id.* at 17. Approximately, one year later, on September 29, 2020, West filed her first motion to dismiss, alleging that the facts supporting the distribution of an intimate image charge did not constitute a crime. *Id.* On October 13, 2020, the State filed a motion to amend the charging information to add Count II, computer trespass, a Class A misdemeanor. *Id.* at 25-26. Two days later, the trial court granted the State's motion to amend. *Id.* at 7. On October 19, 2020, the State filed a motion to dismiss Count I, distribution of an intimate image, and the trial court granted the motion and dismissed the count that same day. *Id.* at 28, 29.

[7] On November 10, 2020, West filed a second motion to dismiss, alleging that the facts relied upon in support of Count II, computer trespass, did not constitute a crime. *Id.* at 30. In her motion and her memorandum in support thereof, West indicated that during a deposition conducted on September 11, 2020, East stated that West had retrieved the password for his phone from his personal laptop computer. *Id.* at 31, 34. The trial court set the matter for a hearing to take place on January 12, 2021. *Id.* at 6.

[8] On November 24, 2020, the State filed a second motion to amend the charging information to add Count III, conversion, a Class A misdemeanor. *Id.* at 40-41. On December 2, 2020, the trial court granted the motion. *Id.* at 5, 43. On December 4, 2020, the State filed a response to West's second motion to dismiss, and West filed her reply on January 5, 2021. *Id.* at 44-47, 48-52.

[9] The trial court held the hearing on the motion to dismiss on January 12, 2021, at the conclusion of which, the trial took the matter under advisement. *Motion to Dismiss Hearing [Tr.] Vol. I* at 2, 10. The trial court also set West's case for a two-day jury trial, at the State's request, to begin on June 23, 2021. *Id.* at 10.

[10] On February 1, 2021, the trial court issued its order denying West's second motion to dismiss. *Appellant's App. Vol. II* at 53-55. The order reads in relevant part as follows:

FINDINGS

1. The State charged Defendant in Count II as follows: on or about July 27, 2019, . . . Kelsie L. West did knowingly or

intentionally access a computer system without the consent of the owner of the computer system. I.C. 35-43-2-3(b)(l).

2. Defendant argues that Defendant's use of a single computer does not meet the definition of computer system.

3. I.C. 35-31.5-2-55 defines computer system as follows:

(a) Except as provided in subsection (b), "computer system" means a device or collection of devices (including support devices):

(1) one (1) or more of which contain a computer program, an electronic instruction, or input data and output data; and

(2) that performs functions, including arithmetic, data storage, retrieval, communication, or control functions.

The term does not include a calculator that is not programmable and that is not capable of being used in conjunction with external files.

(b) "Computer system", for purposes of I.C. 35-43-2-3, has the meaning set forth in I.C. 35-43-2-3(a).

4. I.C. 35-43-2-3, states in relevant part:

(a) . . . .

"Computer system" means a set of related computer equipment, software, or hardware.

(b) A person who knowingly or intentionally accesses:

(1) a computer system; . . . or

(3) any part of a computer system . . . ; without the consent of the owner of the computer system . . . or the consent of the owner's licensee, commits computer trespass, a Class A misdemeanor.

5. Defendant urges [the trial court] to find that the use of one computer does not meet the definition of a computer system.

6. The Court has found no case law regarding the definition of the word set. In the absence of a statutory definition, or clarifying definition, *it is for the trier of fact to decide*.

7. Further, the Court finds *as a matter of law*, applying the canons of statutory construction, one computer meets the definition of computer system.

For the above stated reasons, the Motion to Dismiss is DENIED.

Id. at 53-54 (emphasis added).

[11] Upon West's request, the trial court certified its ruling for discretionary appellate review, and on April 1, 2021, this court granted West's motion for interlocutory appeal and accepted jurisdiction over this case. *Id.* at 56-58, 74.

Discussion and Decision

[12] West argues the trial court abused its discretion by denying her motion to dismiss the computer trespass charge because, according to West, a single computer cannot constitute a "computer system" to satisfy the elements of the computer trespass offense. West argues the trial court abused its discretion two ways: 1) by concluding, as a matter of law, that a single computer can qualify as a "computer system" for purposes of Indiana Code section 35-43-2-3, the computer trespass statute; and 2) in finding that it is for the trier of fact and not the trial court to decide whether West's use of East's laptop falls within the meaning of "computer system" – defined as "a set of related computer equipment, software, or hardware" – because a definition of the word "set" is not found in case law and is not provided in the computer trespass statute.

I. Standard of Review

[13] Generally, we review the denial of a motion to dismiss for an abuse of discretion, *McCown v. State*, 890 N.E.2d 752, 756 (Ind. Ct. App. 2008), while taking the facts stated in the charging information as true. *Delagrange v. State*, 951 N.E.2d 593, 594 (Ind. Ct. App. 2011), *trans. denied*. We will reverse the trial court's decision as being an abuse of discretion if it "is clearly against the logic and effect of the facts and circumstances." *State v. Lindsay*, 862 N.E.2d 314, 317 (Ind. Ct. App. 2007), *trans. denied*. A trial court also abuses its discretion when it misinterprets the law. *State v. Econ. Freedom Fund*, 959 N.E.2d 794, 800 (Ind. 2011), *cert. denied sub nom. FreeEats.com, Inc. v. Indiana*, 568 U.S. 825 (2012). However, when, as here, the denial of the motion to

dismiss rests on the trial court's interpretation of a statute, we review the ruling de novo as a question of law. *McCown*, 890 N.E.2d at 756.

II. Statutory Interpretation

[14] While the question West presents regarding the interpretation of Indiana Code section 35-43-2-3 is one of first impression in Indiana, it is well-settled that in interpreting a statute, we first decide if the statute is ambiguous. *B.S. v. State*, 966 N.E.2d 619, 627 (Ind. Ct. App. 2012), *trans. denied*. If it is not, we need not and do not interpret it but instead apply its plain and clear meaning. *Id.* If the statute is susceptible to more than one reasonable interpretation, it is ambiguous, and we must determine the legislature's intent so that we can give effect to that intent. *Maroney v. State*, 849 N.E.2d 745, 748 (Ind. Ct. App. 2006). Statutes must be read in harmony with related statutes. *St. Margaret Mercy Healthcare Ctrs., Inc. v. Poland*, 828 N.E.2d 396, 402 (Ind. Ct. App. 2005), *trans. denied*. We assume the legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals. *B.K.C. v. State*, 781 N.E.2d 1157, 1167 (Ind. Ct. App. 2003).

[15] "It is a cardinal rule of criminal justice, however, that penal statutes are to be strictly construed against the state and that ambiguities therein are to be resolved in favor of the accused." *Pennington v. State*, 426 N.E.2d 408, 410 (Ind. 1981). Criminal statutes may not "be enlarged by construction, implication, or intendment beyond the fair meaning of the language used." *Herron v. State*, 729 N.E.2d 1008, 1010 (Ind. Ct. App. 2000), *trans. denied.* However, penal statutes

are not to be read so narrowly as to exclude instances the statute fairly covers or in a manner that disregards legislative purposes and intent. *B.K.C.*, 781 N.E.2d at 1167.

[16] The computer trespass statute, under which West was charged, provides that a person who knowingly or intentionally accesses "(1) a computer system; (2) a computer network; or (3) any part of a computer system or computer network" without consent from the owner commits computer trespass as a Class A misdemeanor. Ind. Code § 35-43-2-3(b). The statute defines the terms "access," "computer network," and "computer system" as follows:

> (a) As used in this section:
>
> "Access" means to:
>
> (1) approach;
>
> (2) instruct;
>
> (3) communicate with;
>
> (4) store data in;
>
> (5) retrieve data from; or
>
> (6) make use of resources of;
>
> a computer, computer system, or computer network.

> "Computer network" means the interconnection of communication lines or wireless telecommunications with a computer or wireless telecommunication device through:
>
> (1) remote terminals;
>
> (2) a complex consisting of two (2) or more interconnected computers; or
>
> (3) a worldwide collection of interconnected networks operating as the Internet.
>
> *"Computer system" means a set of related computer equipment, software, or hardware.*

Ind. Code § 35-43-2-3(a) (emphasis added).

[17] Indiana Code section 35-31.5-2-55, titled "Computer System" – another statute that provides a definition for the term "computer system" – defines the term as follows:

> (a) Except as provided in subsection (b), "computer system" means a device or collection of devices (including support devices):
>
> (1) one (1) or more of which contain a computer program, an electronic instruction, or input data and output data; and
>
> (2) that performs functions, including arithmetic, data storage, retrieval, communication, or control functions.

> The term does not include a calculator that is not programmable and that is not capable of being used in conjunction with external files.

Ind. Code § 35-31.5-2-55(a). However, subsection (b) of the statute provides: "'Computer system', *for purposes of IC 35-43-2-3, has the meaning set forth in IC 35-43-2-3(a).*" Ind. Code § 35-31.5-2-55(b) (emphasis added).

[18] West argues that the trial court erred in determining as a matter of law that a single computer meets the definition of a computer system under Indiana Code section 35-43-2-3(b), the criminal statute. According to West, Indiana Code section 35-31.5-2-55 "solely exists to clarify that a single device can be a computer system [] under that statute alone, [but] not [under] the criminal statute." *Appellant's Br.* at 16. West maintains that the legislature "was so fixated on ensuring there was no confus[ion] behind [its] intent with defining 'computer system' that it codified a second statute with a subsection specifically speaking to the criminal statute's definition of 'computer system.'" *Id.* West contends that the legislature "never intended for a computer system to count as a single device or laptop[] under [the criminal statute,]" and the "distinguishing provision in [Indiana Code section] 35-31.5-2-55(b), and the plain, ordinary, and usual meaning of the words 'set' and 'related' [under the criminal statute] provide overwhelming support for this contention[.]" *Id.* at 17.

[19] The State counters, arguing that the trial court "acted well within its discretion when it found as a matter of law that an individual computer system could fall within [the criminal statute.]" *Appellee's Br.* at 11-12. Specifically, the State

contends that when the language of the criminal statute is given its "full effect," the statute "clearly contemplates that a defendant can be convicted of computer trespass if she accesses another person's laptop computer and steals intimate images of a third party from that device without permission[.]" *Id.* at 11. The State maintains that "[n]owhere in the statute's plain text did our legislature indicate either explicitly or implicitly that it intended to limit the crime of computer trespass to apply only in cases where a defendant accesses multiple devices[,]" and, "[i]n fact, the statute's language presumes the opposite, that breaches of a computer system will implicate only a single device." *Id.*

[20] We turn our focus to whether a single computer, specifically, a laptop computer, falls within the definition of computer system as set forth in Indiana Code section 35-43-2-3. At issue is the meaning of the terms "set" and "related" as used in the statute. Ind. Code § 35-43-2-3.

[21] When, as here, the legislature has not provided the meaning of a term in a statute, we may consult English dictionaries to determine a word's plain and ordinary meaning. *Naugle v. Beech Grove City Schs.*, 864 N.E.2d 1058, 1068 (Ind. 2007). Neither "set" nor "related" are obscure terms or terms of art. Merriam-Webster defines a "set" as "a number of things of the same kind that belong or are used together." Merriam-Webster, https://www.merriam-webster.com/dictionary/set (last visited Sept. 17, 2021). Similarly, American Heritage defines "set" as "[a] group of things of the same kind that belong together and are so used: a chess set." The American Heritage Dictionary, https://ahdictionary.com/ word/search.html?q=set (last visited Sept. 17,

2021). Black's Law Dictionary defines "related" as: "**1.** Connected in some way; having relationship to or with something else . . . . **3.** . . . belonging to the same group . . . ." *Related*, Black's Law Dictionary (10th ed. 2014) (emphases in original). "Related" is defined in Merriam-Webster as "connected by reason of an established or discoverable relation." Merriam-Webster, https://www.merriam-webster.com/dictionary/ related (last visited Sept. 17, 2021). American Heritage defines "related" as "1. Being connected; associated." The American Heritage Dictionary, https://ahdictionary.com/word/search.html?q=related (last visited Sept. 17, 2021). Until the legislature tells us otherwise, we adopt these definitions of "set" and "related."

[22] "Software" has been defined as: "**1.** The sequence of instructions by which a computer accepts and translates input symbols, executes actions, and outputs symbols such as numbers, characters in an e-mail message, pictures in a text message, the music played on a mobile device, or GPS coordinates. **2.** More broadly, anything that can be stored electronically." *Software*, Black's Law Dictionary (10th ed. 2014) (emphases in original). "Hardware" is defined as: "Collectively, the equipment that makes up the physical parts of a computer, including its electronic circuitry together with keyboards, readers, scanners, and printers." *Hardware*, Black's Law Dictionary (10th ed. 2014). "Computers are made up of many electronic components such as the central processing unit . . ., memory chips, graphics cards, etc." Daniel Garrie, *Motherboard: The proverbial*

nervous system of the computer, PLUGGED IN: GUIDEBOOK TO SOFTWARE AND THE LAW § 1:5 (2020) (footnote omitted).

[23] Putting the definitions together gives us the meaning of "computer system": a group of the same computer equipment, sequence of instructions, or physical parts of a computer that belong together, are used together, and are connected. Using this definition, we cannot say that a single computer, such as a laptop computer, was meant to be excluded from the definition of computer system under Indiana Code section 35-43-2-3. We reject West's position that the language of the statute suggests otherwise. We presume the legislature intends for "the language used in the statute to be applied logically and not to bring about an absurd or unjust result." *Nash v. State*, 881 N.E.2d 1060, 1063 (Ind. Ct. App. 2008), *trans. denied*. And "it is just as important to recognize what a statute does not say as it is to recognize what it does say. A court may not read into a statute that which is not the expressed intent of the legislature." *Rush v. Elkhart Cnty. Plan Comm'n*, 698 N.E.2d 1211, 1215 (Ind. Ct. App. 1998) (citation omitted), *trans. denied*. If the legislature had intended to specifically exclude from this statute the use of a single computer, it certainly could have done so. Furthermore, the legislature appears to have contemplated multi-device use under the criminal statute in its definition of "computer network," defined in relevant part as "the interconnection of communication lines or wireless telecommunications with a computer or wireless telecommunication device through: (1) remote terminals; [or] (2) a complex

consisting of two (2) or more interconnected computers[.]" Ind. Code § 35-43-2-3(a).

[24] Applying the principles of statutory construction, we conclude the legislature intended a single computer to fall within the definition of "computer system" under Indiana Code section 35-43-2-3. Therefore, the trial court did not abuse its discretion in concluding, as a matter of law, that a single computer can qualify as a "computer system" for purposes of Indiana Code section 35-43-2-3, the computer trespass statute.

III. A Matter for the Trier of Fact

[25] Next, West argues that the trial court erred when it found as follows in its order denying West's motion to dismiss the computer trespass charge:

> 5. Defendant urges [the trial court] to find that *the use of one computer* does not meet the definition of a computer system.
>
> 6. The Court has found no case law regarding the definition of the word set. In the absence of a statutory definition, or clarifying definition, *it is for the trier of fact to decide*.

Appellant's App. Vol. II at 54 (emphasis added). West contends that the trial court erred when it declined to define the word "set" and then "found that it was for the trier of fact, not the courts, to determine a matter of statutory interpretation." *Appellant's Br.* at 14, 15.

[26] It is well-settled that "[a] question of statutory interpretation is a matter of law." *Nash*, 881 N.E.2d at 1063. However, the finding in question was not a determination on the part of the trial court that a matter of law should be decided by the jury. Instead, the trial court's finding was that it was for the trier of fact to decide whether West's *use* of East's laptop computer falls within the meaning of a "computer system" under the computer trespass statute. As our Supreme Court held more than a century ago, "[i]t is the sole province of the jury to determine for itself what facts have been established by the evidence, and also to draw its own inferences of essential facts that are reasonably deducible from all the evidence submitted to them." *Siebe v. Heilman Mach. Works*, 38 Ind. App. 37, 77 N.E. 300, 302 (1906); *see also*, *e.g.*, *Timm v. State*, 644 N.E.2d 1235, 1238 (Ind. 1994) ("Whether an object is a deadly weapon is a question of fact for the jury to determine based on the manner of its use and circumstances of the specific case."); *Glover v. State*, 441 N.E.2d 1360, 1362 (Ind. 1982) ("Where different conclusions can be reached as to whether or not the weapon is deadly, it is a question of fact for the jury to determine from a description of the weapon, the manner of its use and the circumstances of the case."). Thus, the trial court did not err in finding that it is for the trier of fact to determine whether the use of the laptop computer "meets the definition of a computer system" under the computer trespass statute. *Appellant's App. Vol. II* at 54.

[27] We conclude that the trial court did not abuse its discretion by denying West's motion to dismiss the computer trespass charge. We affirm the trial court's ruling.

[28] Affirmed.

May, J., and Vaidik, J., concur.